

(13)
No. 84-4

Office - Supreme Court, U.S.

FILED

DEC 13 1984

ALEXANDER L. STEVAS.

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In The
Supreme Court of the United States
October Term, 1984

— o —
WILLIAMSON COUNTY REGIONAL PLANNING
COMMISSION, et al.,

Petitioners,

v.

HAMILTON BANK OF JOHNSON CITY,

Respondent.

— o —
On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

— o —
**BRIEF OF AMICUS CURIAE
PACIFIC LEGAL FOUNDATION IN
SUPPORT OF RESPONDENT**

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**BRIEF OF AMICUS CURIAE
PACIFIC LEGAL FOUNDATION IN
SUPPORT OF RESPONDENT**

INTEREST OF AMICUS

Pursuant to Supreme Court Rule 36, Pacific Legal Foundation respectfully submits this brief amicus curiae in support of respondent. Consent to the filing of this brief has been granted by counsel for all parties. Copies of the letters of consent have been lodged with the Clerk of this Court.

Pacific Legal Foundation is a nonprofit, tax-exempt corporation, organized and existing under the laws of California for the purpose of engaging in litigation in matters affecting broad public interest. Policy for Pacific Legal Foundation is established by an independent Board of Trustees composed of concerned citizens, the majority of whom are attorneys. The Board evaluates the merits of any contemplated legal action and authorizes such legal action only when it concludes that Pacific Legal Foundation's position has broad support within the general community. Pacific Legal Foundation's Board of Trustees has authorized the filing of this brief.

The Just Compensation Clause of the Fifth Amendment to the United States Constitution, which was made applicable to the states by the Fourteenth Amendment, was intended to ensure that individual owners of private property are not compelled by government action to bear burdens that should rightfully be borne by the public as a whole. If individual rights in property are to be preserved the constitutional guarantee that just compensation must be paid when private property is taken by government must be applied to situations in which a taking results from government regulation of the use of property, even if the taking is temporary because the regulation is rescinded.

Pacific Legal Foundation's public policy perspective in support of private property rights will help provide this Court with a more complete briefing of the interests at stake in this litigation.

OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 729 F.2d 402 (6th Cir. 1984). A copy of that opinion is reproduced in the Joint Appendix (JA).

STATEMENT OF THE CASE

Respondent, Hamilton Bank of Johnson City (Hamilton Bank), is the successor in interest of a land developer who in 1973 submitted a preliminary plat for a proposed residential development covering 676 acres. Petitioner, Williamson County Regional Planning Commission (Commission), approved the preliminary plat in May of 1973, although there was some dispute as to how many lots were actually approved at that time. The plat bore a notation stating that the number of allowable dwelling units for the total development was 736. However, the plat actually showed lot lines for only 469 units on 287 of the 416 acres that were designated for residential development. No lot lines were drawn for the remaining 129 acres and the plat bore the additional notation that these were "not to be developed until approved by the planning commission." In June of 1975, the preliminary plat for the development was revised and reapproved.

After approval of the preliminary plat, development of the project began. Pursuant to Tennessee law, before construction was actually started on a section, a final plat map was submitted to the Commission for approval. Between 1973 and 1979 the Commission approved several final plats.

In 1977 the Williamson County zoning regulations were amended. However, the Commission continued to apply the prior regulations to the development and in 1978 renewed approval of the preliminary plat. In April of 1979 the preliminary plat was renewed for an additional year. That same year, the Commission decided to apply then-existing regulations to further development approvals rather than those regulations which were in effect when initial approval had been given.

In October of 1980 the developer again submitted the preliminary plat for approval. However, the Commission disapproved the plat for noncompliance with density requirements in current regulations and because lots were placed on slopes greater than 25%. The following month Hamilton Bank, through foreclosure, acquired the property that had not been developed and sold.

In June, 1981, Hamilton Bank submitted a preliminary plat which was substantially similar to the plat previously disapproved by the Commission. The Commission disapproved this plat during that same month. Hamilton Bank then filed this suit in the United States District Court for the Middle District of Tennessee. The complaint set forth numerous claims, among which was a claim that Hamilton Bank's property had been taken without the payment of just compensation in violation of the United States Constitution, and a claim that under the state common law the Commission was estopped from not allowing the project to proceed.

After trial to a jury, a verdict with answers to special interrogatories was returned in favor of Hamilton Bank. The jury found that Hamilton Bank had been

denied economically viable use of its property and that the Commission was estopped under state law from requiring Hamilton Bank to comply with current zoning regulations as opposed to the regulations in effect in 1973. The jury returned a verdict of damages in the amount of \$350,000 for the temporary taking of Hamilton Bank's property for the period from disapproval of the plat in 1980, to the date of its estoppel verdict.

Subsequently the District Court granted the Commission's motion for judgment notwithstanding the verdict on the taking issue. Although the District Court found the evidence was sufficient to support the verdict that Hamilton Bank had been denied economically viable use of its property, it held as a matter of law that "such a temporary denial" does not constitute a taking under the Fifth Amendment. JA at 41. On Hamilton Bank's appeal from the judgment notwithstanding the verdict, the United States Court of Appeals for the Sixth Circuit reversed, with one judge dissenting. The Court of Appeals concluded that the jury's finding that the Commission deprived Hamilton Bank of economically viable use of its property was supported by the evidence and the judgment notwithstanding the verdict was improper. The Court of Appeals concluded that under a theory of a temporary taking the award of damages was appropriate and the amount of \$350,000 was supported by the evidence.

SUMMARY OF ARGUMENT

1. Denial of all economically viable use of property by government is a "taking" requiring payment of just compensation notwithstanding the fact that the denial is temporary. The jury determination of the factual basis establishing a temporary taking is not open to question at this time since the Commission did not assert error on these matters.

2. The legitimate claim of Hamilton Bank to use of its property, arising from a reasonable expectation created by state law and the actions of the Commission, is a "property interest" within the contemplation of the Just Compensation Clause.

3. Fulfilling the command of the Fifth Amendment that property owners be justly compensated when their property is taken by regulation will not deprive local governments of discretion in land use matters. The property owner may be compensated by the return of the use of the property and monetary compensation for the period during which he or she was deprived of the use of the property.

ARGUMENT

I

THE TEMPORARY INTERFERENCE WITH A RECOGNIZED PROPERTY INTER- EST MAY REQUIRE JUST COMPENSATION TO ACHIEVE THE PURPOSES OF THE FIFTH AMENDMENT

The Fifth Amendment guarantee that private property will not be taken for a public use without the payment of just compensation was "designed to bar Government from forcing some people alone to bear public burdens

which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). Although this Court has wrestled with the question of what constitutes a taking on many occasions, *Ruckelshaus v. Monsanto Co.*, — U.S. —, 104 S. Ct. 2862, 2874 (1984), it "has been unable to develop any 'set formula' for determining when 'justice and fairness' require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons." *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978). However, this Court's decisions on the Just Compensation Clause have resulted in rules which support the claim for compensation in this case.

It has long been settled that "a taking" of property can occur by means other than governmental acquisition or destruction of the property. In *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), Justice Holmes writing for the Court acknowledged that "[g]overnment hardly could go on if, to some extent, values incident to property could not be diminished without paying for every such change in the general law." *Id.* at 413. However, he concluded that

"[t]he general rule, at least, is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Id.* at 415.

Under the rule announced by Justice Holmes a determination of a "taking" is a "question of degree." *Id.* at 416. In more recent cases this Court has further articulated the standards by which a police power regulation of the use of land is to be judged to determine if the degree of regulation has gone "too far." In *Agins v. City of Tiburon*, 447 U.S. 255 (1980), the Court stated

that "[t]he application of a general zoning law to particular property effects a taking if the ordinance does not substantially advance legitimate state interests or [if it] denies an owner economically viable use of his land" *Id.* at 260 (citations omitted). In applying this standard to the *Agins* case, this Court concluded that it could not hold that the Tiburon ordinance effected a taking. The ordinance "substantially advance[d] legitimate governmental goals," *id.* at 261, and since the property owners had not sought approval to develop their property they were "free to pursue their reasonable investment expectations." *Id.* at 262.

Applying the *Agins* standard to this case leads to the opposite result. Hamilton Bank submitted a plan to develop its property which was disapproved for reasons which the Court of Appeals concluded would imply disapproval for any plan which would fulfill Hamilton Bank's reasonable investment backed expectations. *Hamilton Bank of Johnson City v. Williamson County Regional Planning Commission*, 729 F.2d at 408 n.7. Additionally, after a full trial on the matter the jury returned a verdict that Hamilton Bank had been denied economically viable use of its property. JA at 37. The District Court acknowledged that there was evidence to support the jury's conclusion. However, it reasoned that the Commission was entitled to judgment notwithstanding the verdict because the result of the jury's verdict on the state common law estoppel issue would be that the denial of economic use was only temporary. JA at 41. The District Court's reasoning is unsupported by law. A taking of property is not made any less of a taking simply because it is temporary. *San Diego Gas & Electric Co. v. City of San*

Diego, 450 U.S. 621, 657 (1981) (Brennan, J., dissenting). The temporary nature of the taking is only relevant to the amount of compensation to which the property owner is entitled. *United States v. Causby*, 328 U.S. 256, 268 (1946).

The jury's verdict that Hamilton Bank had been denied viable economic use of its property remains undisturbed. It is too late in the day for the Commission to attack that finding. The Commission's motion for new trial was denied by the District Court on the basis that the evidence supported the conclusion that Hamilton Bank had been temporarily denied economically viable use of its property and "the relevant facts to which the question of the law applies . . . could not be further or more fairly developed." JA at 41. The Commission did not seek appellate review of this portion of the judgment.¹ There is no question at this point as to whether Hamilton Bank's property was temporarily taken. The only issue to be considered is whether the Just Compensation Clause mandates that Hamilton Bank be compensated.

This question must be answered affirmatively. The requirement that just compensation be paid when private property is taken is imposed by a self-executing constitutional provision. *San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. at 654 (Brennan, J., dissenting),

¹ Pursuant to Federal Rules of Civil Procedure, Rule 50(c) (1), the judgment of the District Court included a conditional denial of the Commission's motion for new trial of the issues decided by the jury. JA at 41. The Commission has not "assert[ed] error in that denial" as provided by Rule 50(c) (1) by perfecting an appeal, see Petition for Writ of Certiorari at 9, or by asserting this error in its appellate brief or its petition for rehearing. The Commission's arguments before the Court of Appeals were limited to support for the judgment notwithstanding the verdict.

citing *United States v. Clarke*, 445 U.S. 253, 257 (1980). The Court of Appeals and the District Court both recognized that the current regulations, the application of which denied Hamilton Bank viable economic use of its property, serve a legitimate state interest. *Hamilton Bank of Johnson City v. Williamson County Regional Planning Commission*, 729 F.2d at 405; JA at 39-40. For this reason it is assumed that the public benefited from the application of the regulations to Hamilton Bank's property. Whichever way this Court decides this case, it will not change the established fact that the public has enjoyed the benefit from the denial of an important property interest of the Hamilton Bank's. Likewise the decision in this case cannot change the basic fact that someone must pay for the benefits the public enjoyed by bearing the unavoidable costs. This case can only determine whether Hamilton Bank alone must bear the costs of the public benefits or the public at large will share in those costs. It is preferred as a matter of public policy as well as a principle of law that the burdens and costs should be fairly distributed through the payment of some kind of just compensation.

"If the regulation denies the private property owner the use and enjoyment of his land and is found to effect a 'taking,' it is only fair that the public bear the cost of benefits received during the interim period between application of the regulation and the government entity's rescission of it." *San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. at 656-57 (Brennan, J., dissenting).

The guiding principle of the Just Compensation Clause is that a property owner be put in as good a position as he or she would have occupied had his or her

property not been taken. *United States v. Virginia Electric and Power Co.*, 365 U.S. 624, 633 (1961). Since an interest in the use of property cannot be restored for any time of use which has passed, only monetary compensation for the value of lost time of use can place the owner in a position as good as that he or she would have occupied had the taking not occurred. See *San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. at 657 (Brennan, J., dissenting).

II

A PROTECTED INTEREST, BASED UPON A REASONABLE AND LEGITIMATE EXPECTATION OF A PROPERTY OWNER TO MAKE USE OF HIS PROPERTY, MAY NOT BE DESTROYED BY LAND USE REGULATION WITHOUT PAYMENT OF JUST COMPENSATION

"Property rights in a physical thing have been described as the rights 'to possess, use and dispose of it.'" *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982), quoting *United States v. General Motors Corp.*, 323 U.S. 373, 378 (1945). Although this Court has noted that "'property interests . . . are not created by the constitution,'" *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980), quoting *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972), some property interests are so essential to our notion of property that they are "universally held to be a fundamental element of the property right," *Kaiser Aetna v. United States*, 444 U.S. 164, 179-80 (1979), and "serious constitutional questions might be raised" if the state attempted to redefine those interests in a general manner. *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 94-95 (1980), (Marshall, J. concurring).

The right of an individual to prevent the permanent occupation of his or her property by others is an example of such a fundamental interest. Any time this interest is taken by government action, the property owner must be compensated. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. at 441. The right of a property owner to some reasonable use of his or her property is another such fundamental interest, and if this interest is taken by government the property owner must be compensated. *Agins v. City of Tiburon*, 447 U.S. at 260. On top of the foundation of such fundamental property rights the state through its statutory and common law builds the edifice of interests which become the recognized structure of property in that state. A property owner is entitled to rely upon this structure of property and to employ the Due Process and Just Compensation Clauses to protect his or her claims to these interests.

In the area of land use regulation it is axiomatic that a property owner does not have an absolute right to put his or her property to any particular use. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Nonetheless a property interest may arise from an "independent source." *Board of Regents v. Roth*, 408 U.S. at 577. Once such an interest exists "fairness and justice" require that the cost of depriving the property owner of this right "should be borne by the public as a whole." See *Armstrong v. United States*, *supra*.

This Court has established extensive jurisprudence on the question of when such a "property interest" arises under the Due Process Clause. In *Board of Regents v. Roth*, 408 U.S. 564, this Court stated that "[p]roperty interests . . . are not created by the Constitution. Rather,

they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Id.* at 577. To establish the existence of a protected interest "a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Id.* Such a "claim of entitlement" can be created expressly by statute, *id.* at 561, or implied by government action. *Perry v. Sindermann*, 408 U.S. 593, 602 (1972). If, under all of the circumstances of a given case, government action has given rise to a legitimate claim of entitlement to a certain use, a property interest exists and it cannot be denied without the procedural protection required by the Due Process Clause. *Goldberg v. Kelly*, 397 U.S. 254 (1970). The same interest is entitled to the protection of the Just Compensation Clause. For constitutional protections property is property.

In *Lynch v. Household Finance Corp.*, 405 U.S. 538 (1972), Justice Stewart, writing for the Court, stated:

"Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a 'personal' right In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized." *Id.* at 552 (citations omitted).

Inasmuch as the Due Process Clause and the Just Compensation Clause were both intended to protect personal rights in "property," the same test should be utilized

to determine when a property interest exists for purposes of either clause.

Ruckelshaus v. Monsanto Co., *supra*, one of the most recent decisions of this Court applying the Just Compensation Clause, is an example of a case in which this Court applied the legitimate expectation analysis to the question of whether a "taking" occurred. In *Ruckelshaus*, a pesticide manufacturer challenged the data disclosure provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, alleging that disclosure of data provided to the Environmental Protection Agency (EPA) constituted a "taking" of property without just compensation, in violation of the Fifth Amendment. This Court considered whether under the circumstances of that case the manufacturer had a legitimate expectation that its data would be kept confidential when submitted to the EPA. This Court concluded that for the period from 1972 to 1978, the manufacturer did have such an expectation, which resulted from an explicit guarantee by the federal government that data provided by the manufacturer would be kept confidential. EPA's consideration or disclosure of data submitted under this guarantee would constitute a taking of a property interest. 104 S. Ct. at 2879. Since Monsanto's protected interest arose from its legitimate expectation that its data were to be confidential, no protected interest existed for the years after the guarantee of confidentiality was revoked. *Id.* In refusing to apply a 1975 statutory provision purporting to carry backward the guarantee of confidentiality to years prior to 1972, this Court emphasized that the protected interest is created by "the expectations of the submitter," which cannot be changed after the fact. *Id.* at 2879 n.17.

Application of this test to this case establishes that Hamilton Bank is entitled to compensation. The District Court instructed the jury on the state common law estoppel issue as follows:

"[I]f you find that [Hamilton] in good faith made a substantial change in position or incurred extensive obligations and expenses in reliance upon the previous approval of the Temple Hills project by the [planning commission] so that it would be inequitable and unjust to destroy the right to develop Temple Hills which [Hamilton] had acquired, then you should . . . find that the [planning commission] was estopped or prevented from exercising [its] regulatory powers in such a way as to deprive [Hamilton] the right to develop the Temple Hills project." *Hamilton Bank v. Williamson County Regional Planning Commission*, 729 F.2d at 406-07.

The jury returned a verdict that the Commission was estopped under state law from requiring Hamilton Bank to comply with post-1973 zoning regulations. Therefore, it must have found that Hamilton Bank had, as a matter of state law, a legitimate expectation, resulting from the Commission's prior actions, that it was entitled to develop its property. This legitimate claim constitutes a property interest and inasmuch as the Commission's actions deprive Hamilton Bank of its expectation, Hamilton Bank is entitled to compensation.

"It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined." *Board of Regents v. Roth*, 408 U.S. at 577. If government for the sake of the public good interferes with the "claims upon which people [have relied]" it is

only just and fair that the public as a whole bear a fair share of the burden of the cost of that interference.

III

CLEAR STANDARDS FOR THE JUST COMPENSATION OF INDIVIDUALS WHOSE PROPERTY HAS BEEN TAKEN WILL AID, NOT DESTROY, LOCAL GOVERNMENT DISCRETION IN LAND USE MATTERS

Although "various policy considerations," *see Agins v. City of Tiburon*, 24 Cal. 3d 266, 275-76 (1979), *aff'd*, 447 U.S. 255 (1980), have been argued against monetary damages as an appropriate remedy when property is "taken" by an exercise of the police power, these policy considerations do not justify the circumvention of a constitutionally guaranteed right. Essentially, these "policy considerations" concern preserving local governments' discretion in the area of land use planning and protecting local governments' treasuries.

Similar policy considerations were rejected in *Owen v. City of Independence*, 445 U.S. 622 (1980), in which this Court held that municipalities have no immunity from liability under 42 U.S.C. § 1983 and that they cannot assert the good faith of their officers as a defense to such liability. In *Owen* this Court stated:

"First, as an empirical matter, it is questionable whether the hazard of municipal loss will deter a public officer from the conscientious exercise of his duties; city officials routinely make decisions that either require a large expenditure of municipal funds or involve a substantial risk of depleting the public fisc. [Citation omitted.] More important, though, is the realization that consideration of the *municipality's* liability for constitutional violations is quite properly the concern of its elected or appointed officials.

Indeed, a decisionmaker would be derelict in his duties if, at some point, he did not consider whether his decision comports with constitutional mandates and did not weigh the risk that a violation might result in an award of damages from the public treasury. As one commentator aptly put it: 'Whatever other concerns should shape a particular official's actions, certainly one of them should be the constitutional rights of individuals who will be affected by his action.'" *Id.* at 656 (emphasis in original).

Recognizing these policy concerns, Justice Brennan in his dissent in *San Diego Gas & Electric Co. v. City of San Diego*, *supra*, proposed a constitutional rule that "once a court finds that a police power regulation has effected a 'taking,' the government entity must pay just compensation for the period commencing on the date the regulation first effected the 'taking,' and ending on the date the government entity chooses to rescind or otherwise amend the regulation." 450 U.S. at 658 (Brennan, J., dissenting). This suggestion was made in response to the property owner's claim that the government had to condemn its property and pay market value after a police power regulation had effected a taking. *Id.*

This description suggests a flexible approach to determining what compensation would be just in each case and it undercuts the "policy considerations" which are the basis for the arguments presented to this Court that uncompensated takings of private property should be allowed to ensure a high degree of flexibility in governmental decision making. Nonetheless, those who oppose awarding monetary damages for regulatory takings insist that holding municipalities accountable for constitutional violations

will deprive local governments of discretion in land use matters. See *Amici Curiae Brief of State of California ex rel. John K. Van de Kamp, Attorney General, and California Coastal Commission, the Tahoe Regional Planning Agency, the States of Alaska, Florida, Iowa, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, North Carolina, Oklahoma, South Dakota, Utah, Vermont, Wisconsin, Wyoming, and the Territory of American Samoa* at 14.

These arguments refuse to recognize that the guiding principle of just compensation is merely to put the property owner in as good a position as he or she would have occupied had his or her property not been taken. *United States v. Virginia Electric and Power Co.*, 365 U.S. at 633. In most situations this would mean payment of the full monetary equivalent of the property taken. See *United States v. Reynolds*, 397 U.S. 1416 (1970). In many cases such as this one, the owner has not been deprived of the permanent use of his or her property. The restoration to the owner of the ability to make reasonable use of the property leaves only the need for the payment of damages for the period during which the owner was deprived of the use of the property.

Such a result does not disable local governments from maintaining their discretion in deciding local land use matters. If the government entity imposing the regulation determines that continuing the regulation, despite the fact that it works a taking, serves the best interest of the community, it can formally condemn the property. *San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. at 659-60 (Brennan, J., dissenting).

Property owners have good reason to fear if their remedies are limited to giving local government entities the alternative either to cease the regulation or to condemn the property. *Id.* at 655 n.22. Interim damages are necessary for adequate protection, especially from the abuses of regulators, whose ire has been raised by litigation. In the absence of a "set formula" for a judicial determination of when a taking occurs, the property owner can never be certain that enough requests for approval have been made and denied to establish that the municipality intends to allow no economically viable use. The "land use game" can stretch out for years as the municipality, facing no liability for its conduct, rejects this or that aspect of a proposed use. Even after final approvals have been given and substantial investments in a use have been made, approvals may be withdrawn, and the burden will still rest on the landowner to prove that regardless of the conduct of the municipality the landowner has created a "vested right" to proceed. See, e.g., *Santa Monica Pines, Ltd. v. Rent Control Board*, 35 Cal. 3d 858 (1984). Such uncertainty is an attribute of a governmental privilege, not of a property right.

Consistent application of the legitimate expectation analysis to the area of land use will provide a much-needed increase in the degree of certainty associated with land use decisions. Examining not only the conduct of the landowner in creating a "vested right," but also the conduct of the municipality in creating a "legitimate expectation" will spread the burden associated with conduct to both sides and will provide a brighter line between that regulation which requires compensation and that which does not. The brighter line will assist the balance of interests and allow local governments discretion to determine the best

interests of their communities while affording property owners the full protection of the Fifth Amendment for their reasonable and legitimate expectations associated with their personal rights in the use and enjoyment of private property.

CONCLUSION

The Just Compensation Clause of the Fifth Amendment mandates that when private property is "taken" the property owner is to be compensated. This self-executing constitutional provision must not be circumvented for expedient "policy considerations." If, as in this case, a property owner is denied economically viable use of property or a legitimate expectation in use of property so as to bestow a benefit on the public as a whole, justice and fairness require that the public as a whole bear a reasonable share of the costs associated with that benefit.

For the foregoing reasons *amicus curiae*, Pacific Legal Foundation, respectfully urges that the decision of the Court of Appeals be affirmed.

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